

M e m o r a n d u m**565.1230**

To : Mike Hilbert
Aerospace Coordinator
Audit Review & Refunds Section

Date: July 15, 1992

From : John L. Waide
Tax Counsel

Subject: Contractor's Employees' Purchases of Gas and Meals

I am writing this to answer your memorandum to me of April 21, 1992. You indicated that [name] District Auditor Martha Brothers had requested a legal opinion regarding L---'s recent issuance of corporate credit cards to its employees for the above expenses. Apparently, [CPA] had advised L--- that if the employees purchased these items with their own money then L--- could not treat these costs as overhead expenses exempt under the Aerospace decision. Presumably these items concern expenses for company-sponsored travel for which L--- reimburses the employees upon completion of the travel rather than the employees' ordinary commute expenses.

As you know, under the Aerospace decision, a government contractor may treat indirect costs - i.e., overhead expenses- properly allocable to its government contracts as purchases for resale to the United States, which are exempt from sales tax if the government contract involved contains the title-passage clauses set forth in FAR 52.232-16(d). "In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used..." (FAR 31.201-2.) "The contractor's method of allocating indirect costs shall be in accordance with standards promulgated by the CAS Board, if applicable to the contract; otherwise the method shall be in accordance with generally accepted accounting principles which are consistently applied." (FAR 31.203(d).)

Under the former practice, the employee made the purchases. The fact that L--- reimbursed him for the expenses did not transmute the expense into L---'s own expense. There was thus no purchase by the government contractor of property title to which could be accelerated to the United States. When the employee uses a company credit card, the company is actually purchasing the property and title can be accelerated. We thus conclude that if expenses engendered by employees by their use of the company credit card are properly allocable to the company's government contracts under the above standards, such expenses are exempt indirect costs under the Aerospace decision.

JLW:es